and that many operations were performed in full view of complainants' premises, due to the fact that the operating room of said hospital was on the side of the building adjoining said premises. The trial court found that these shrieks and groans were no louder, nor of greater frequency than those emanating from any well conducted hospital. *Held,* that the hospital, conducted with the operating room adjoining complainants' premises, constituted a nuisance of which complainants had a right to complain, and an injunction was granted restraining further use of the hospital until the room was changed to another portion of the building.—*Kestner, et al.* v. *Homeopathic Medical & Surgical Hospital of Reading* (Pa. 1914), 91 Atl. 659.

Although an extreme case pertaining to nuisances, the principal case stands for what seems to be the weight of authority in this country and in England. Although not a nuisance per se, (See *Bessonies* v. *City of Indianapolis,* 71 Ind., 189), the majority of cases hold that a hospital or asylum may be so conducted or so situated with relation to the property of another, as to be a nuisance of which such person may rightfully complain. *Deaconess Home and Hospital* v. *Bontjes,* 207 Ill., 553; *Gilford* v. *Babies' Hospital,* 1 N. Y. Supp., 448; *Baltimore City* v. *Fairfield Imp. Co.,* 87 Md. 352; *Everett* v. *Paschall,* 61 Wash., 47; *Cherry* v. *Williams,* 147 N. C., 452. The status of the hospital or asylum as a charitable institution does not constitute any justification for the continuance of such a nuisance, or interpose any defence to the abatement thereof. See cases above cited, and *Tod-Heatly* v. *Benham,* 40 Ch. Div., 80. The test applied in a great majority of these cases is well stated in WOOD, NUISANCES, § 9, as follows: "The locality, the condition of property and the habits and tastes of those residing there, divested of any fanciful notions, or such as are dictated by "dainty modes and habits of living," is the test to apply in a given case. In the very nature of things, there can be no definite or fixed standard to control every case in any locality. The question is one of reasonableness or unreasonableness in the use of property, and this is largely dependent upon the locality and its surroundings."

TRUSTS—RIGHTS OF BENEFICIARIES.—Plaintiff's parents conveyed land to defendant under an agreement that he should support them during life and also pay plaintiff a certain sum when she became eighteen years of age. At the same time he executed a mortgage of the premises for her benefit. Before plaintiff was eighteen the agreement was cancelled and the mortgage discharged without her knowledge or consent. She sought to foreclose the mortgage upon defendant's refusal to pay the sum above mentioned. *Held,* that the original transaction between defendant and his parents established the relation of debtor and creditor between defendant and plaintiff which relation could not be changed by the agreement of the parents and defendant without plaintiff's consent. *Wetutzke* v. *Wetutzke* (Wis. 1914), 148 N. W. 1088.

The majority opinion relies on the case of *Tweeddale* v. *Tweeddale,* 116 Wis. 517, which decided that when one person for a consideration moving to him from another promises to pay a third person a sum of money, the

law operating upon the acts of the parties creates the essential privity between the promisor and third person, establishing a new relation of debtor and creditor which cannot be altered as regards the third person without his consent. Three of the court dissented on the ground that in *Tweeddale* v. *Tweeddale* the agreement was fully executed, whereas in the principal case it was still executory when cancelled and that the doctrine should not be so extended. Under similar facts other courts have reached the same conclusion as in the principal case, by a different line of reasoning. In *Copeland* v. *Summers,* 138 Ind. 219, it was held that "by the conveyance and taking back obligation to pay plaintiff sums therein named the parent made the defendant a trustee for the plaintiff and thereafter he held such funds as trustee." The trust being once established was irrevocable without the beneficiary's consent. A similar rule has been laid down in Vermont. It is said that the effect of the transaction was to create a trust and to vest in the plaintiff a right to the money of which he could not be divested without his consent, and on failure of the defendant to make payment of the specified sum, the beneficiary could avail himself of the mortgage. *Sargent* v. *Baldwin,* 60 Vt. 17; *Howard* v. *Howard,* 60 Vt. 362. In *Lewis* v. *Nelson,* 4 Mich. 630, the court seemed to recognize such a rule, but refused to hold that an irrevocable trust was established by the transaction, because in that case the defendant had not executed the deed and also because the event upon which the money was to fall due,— viz., death of the parents,—had not happened. It is now almost universally held that a third person can sue in his own name on a promise made for his benefit, subject to various qualifications imposed by the law of the different states. *Johnson* v. *Trust Co.,* 159 Ind. 610; *Spaulding* v. *Henshaw,* 80 Ky. 55; *Crone* v. *Stinde,* 156 Mo. 262; *Painter* v. *Kaiser, 27* Neb. 432; *MacKay-Nisbit Co.* v. *Kuhlman,* 119 Ill. App. 144; *Burton* v. *Larkin,* 36 Kan. 246; *Blakley* v. *Adams,* 113 Ky. 396; *Glencoe Lime & Cement Co.* v. *Wind,* 86 Mo. App. 163; Contra: *Marston* v. *Bigelow,* 150 Mass. 45; *Wheeler* v. *Stewart,* 94 Mich. 455, but in the latter state the beneficiary could sue in equity, *Palmer* v. *Bray,* 136 Mich. 85. See 15 HARV. LAW REV. 767.

WILLS—ATTESTING WITNESSES.—The Kentucky statute making a beneficiary under a will a competent attesting witness to prove the execution thereof, and declaring the devise or bequest to such witness void, *Held* to have no application to a witness and devisee who testifies to the handwriting of the testator in an holographic will. *McNamara et al* v. *Coughlin et al,* (Ky. 1914), 169 S. W. 555.

The rule here laid down would seem to be correct following the holding in *Sellars* v. *Kirby,* 82 Kans. 291, 108 Pac. 73, 28 L. R. A. (N. S.) 270, 136 Am. St. Rep. 110, 20 Am. & Eng. Ann. Cas. 214, that "witness" in a statute of this nature meant subscribing witnesses, and affected only those persons who had subscribed to a will as witnesses to the execution thereof. The court of Georgia took this same view, in the case of *Smith* v. *Crotty,* 112 Ga. 105, 38 S. E. 110, holding that a witness to a nuncupative will did not lose his bequest by being such.